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No. 58

In the Supreme Court of the United States

OCTOBER TERM, 1968

EDWARD SOMERVILLE,
Petitioner,

vs.

THE PEOPLE OF THE STATE OF ILLINOIS,
Respondent.

On Petition For A Writ of Certiorari To The Appellate Court of Illinois, First Judicial District.

REPLY TO BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

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The petition for a writ of certiorari disclosed a discrepancy between the testimony of the witness Arnold given at the proceedings against petitioner and at the subsequent trial of Donald Somerville and Marjorie Kullerstrand. Respondent, in its brief does not dispute the existence of this conflicting testimony. Instead it merely quotes additional evidence offered by Arnold at petitioner's trial, and argues that this abstracted testimony is not inconsistent with that given at the later cause.

Admittedly, much of what Arnold said at one proceeding is entirely consistent with his testimony at the other. The fact remains, however, that prior to petitioner's trial, the prosecutor had told this witness he could probably get leniency; yet on the stand Arnold denied knowledge of any such promise. Most importantly, the very same State's Attorney who had tendered the promise remained silent in the face of the perjury.

This factual situation closely parallels the one facing this Court in *Napue* v. *Illinois,* 360 U.S. 264 (1959). There, it was held that the failure of the prosecutor to correct the testimony of a witness which he knew to be false denied the petitioner due process of law in violation of the Fourteenth Amendment. On the same grounds, this petitioner's conviction must be overturned.

Respectfully submitted,

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